

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FORD MOTOR CREDIT COMPANY,

Plaintiff,

v.

NO. CIV. S-04-2344 LKK/JFM

MICHAEL DAUGHERTY,

Defendant.

AND RELATED COUNTER-CLAIM AND
THIRD-PARTY COMPLAINT.

Pending before the court is a motion for judgement on the pleadings, brought by third party defendant, Ford Motor Company, Lincoln Mercury Division ("Lincoln Mercury"). Lincoln Mercury alleges that claims raised by third party plaintiffs, Daugherty Lincoln-Mercury, Inc. ("DLMI"), and Michael Daugherty ("Daugherty"), are barred under the doctrine of collateral estoppel.¹ Specifically, Lincoln Mercury argues that third party

¹ The claims at issue are: (1) breach of contract; (2) breach of covenant of good faith and fair dealings; (3) unfair business practices; (4) interference with contractual relations; (5) tortious interference with prospective business advantage;

1 plaintiffs raise the identical factual allegations in their third
2 amended complaint as were raised and decided in an administrative
3 hearing before the California New Motor Vehicle Board ("NMVB").
4 Lincoln Mercury also asks that the court dismiss DLMI's eighth and
5 ninth claims because this court dismissed the identical claims
6 against Ford Motor Credit in response to Ford Motor Credit's motion
7 to dismiss.

8 **I.**

9 **DAUGHERTY'S LINCOLN MERCURY DEALERSHIP²**

10 In March of 1999, Michael Daugherty, owner of DLMI, executed
11 a buy-sell agreement for the purchase of a Lincoln Mercury
12 dealership to be operated in Sacramento, California. In June of
13 1999, DLMI was enfranchised by Lincoln Mercury as a Lincoln and
14 Mercury dealer under three separate franchise agreements. During
15 the course of operations, DLMI entered into various financing
16 arrangements with plaintiff and counter-defendant, Ford Motor
17 Credit Company ("Ford Credit"), including an agreement for a
18 capitalization loan and a separate agreement for wholesale flooring
19 for DLMI's new vehicle inventory.

20 What happened next is the subject of this litigation.
21 According to DLMI, on or about December 1, 2001, as a result of
22 fraudulent actions of Lincoln Mercury and Ford Credit, DLMI was
23 forced to cease its Lincoln and Mercury sales operations.

24
25

 (6) Misrepresentation-deceit-fraud.

26 ² These facts are adopted from the parties' briefs.

1 According to Lincoln Mercury, DLMI ordered an excess number of cars
2 and was unable to sell all the cars ordered. DLMI's actions caused
3 the dealership to fail.

4 It is undisputed that on January 23, 2002, Lincoln Mercury
5 notified DLMI that it intended to terminate DLMI's Lincoln and
6 Mercury franchise agreements. DLMI then filed a protest with the
7 California New Motor Vehicle Board, pursuant to California Vehicle
8 Code Section 3060, protesting the proposed termination of its
9 franchise.

10 II.

11 THE DECISION OF THE NEW MOTOR VEHICLE BOARD

12 The hearing on the protest occurred before an administrative
13 law judge ("ALJ") for the NMVB. The ALJ heard evidence on the
14 termination protest on January 7 and 9, 2003. On April 24, 2003,
15 the NMVB adopted the proposed decision of the ALJ.

16 The specific issue pending before the Board was "whether
17 Lincoln Mercury has good cause for the termination of Daugherty's
18 Lincoln and Mercury Franchises." NMVB decision at 5. Pursuant to
19 section 3066(b) of the California Vehicle Code, Lincoln Mercury had
20 the burden to establish good cause for the termination of the
21 franchise.³

22 ////

23
24 ³ In making the determination, the ALJ considered factors
25 such as the amount of business transacted by the franchisee, the
26 permanency of the investment, whether it is injurious to the public
for the franchise to be modified, and whether the franchisee failed
to fulfill the warranty obligations, to name a few.

1 The ALJ made two important findings of fact relevant to this
2 litigation. First, the ALJ determined that Daugherty did in fact
3 order the additional cars to sell, a fact that third party
4 plaintiffs contest in this litigation. Specifically, the ALJ
5 found that "there is no doubt that Daugherty was aware that these
6 vehicles were being ordered to be built and delivered and that
7 Daugherty not only desired them but required them in order to stay
8 operational." NMVB decision at 24. Second, the ALJ concluded that
9 Lincoln Mercury had "established that Daugherty was not and is not
10 conducting an adequate amount of business as compared to the
11 business available to it." Id. at 26. The ALJ concluded that "the
12 cessation of business by Daugherty was not caused by conduct of
13 representatives of Lincoln Mercury." Id. at 27.

14 Upon the Board's conclusion that good cause had been
15 established for the termination of the DLMI franchise, DLMI
16 petitioned the Sacramento County Superior Court for a writ of
17 administrative mandamus pursuant to Cal. Civ. Proc. Code § 1094.5.
18 The writ was denied by the court.

19 **III.**

20 **THE THIRD AMENDED COUNTERCLAIM BY THIRD PARTY PLAINTIFFS**

21 On June 16, 2005 third party plaintiffs filed a third amended
22 counterclaim against Ford Credit and Lincoln Mercury. The
23 counterclaim asserted twelve claims: breach of contract (1st claim;
24 breach of covenant of good faith and fair dealing (2nd claim);
25 unfair business practices (3rd claim); interference with
26 contractual relations (4th claim); tortious interference with

1 prospective business advantage (5th claim); misrepresentation-
2 deceit-fraud (6th claim); negligent misrepresentation (7th claim);
3 Violation of California Vehicle Code section 11713.2 against
4 Lincoln Mercury only (8th claim); Daugherty's separate claim of
5 violation of California Vehicle Code section 1173.2 against Lincoln
6 Mercury (9th claim); Daugherty's separate claim against Ford Credit
7 for fraud as a release from guaranty (10th claim); Daugherty's
8 separate claim against Ford Credit for violation of continuing
9 guarantees (11th claim).

10 Lincoln Mercury brings this motion for judgment on the
11 pleadings in response to the third amended complaint. This motion
12 only concerns claims one through six and claims eight and nine.

13 IV.

14 STANDARDS

15 A motion for judgment on the pleadings may be brought "[a]fter
16 the pleadings are closed but within such time as to not delay the
17 trial." Fed. R. Civ. P. 12(c). All allegations of fact by the
18 party opposing a motion for judgment on the pleadings are accepted
19 as true. Doleman v. Meiji Mut. Life Ins. Co., 727 F.2d 1480, 1482
20 (9th Cir. 1984). A "dismissal on the pleadings for failure to
21 state a claim is proper only if 'the movant clearly establishes
22 that no material issue of fact remains to be resolved and that he
23 is entitled to judgment as a matter of law.'" Id. (quoting 5 C.
24 Wright & A. Miller, Federal Practice and Procedure: Civil § 1368,
25 at 690 (1969)); see also McGlinchy v. Shell Chemical Co., 845 F.2d
26 802, 810 (9th Cir. 1988).

1 When a Rule 12(c) motion is used to raise the defense of
2 failure to state a claim, the motion is subject to the same test
3 as a motion under Rule 12(b)(6). McGlinchy, 845 F.2d at 810;
4 Aldabe v. Aldabe, 616 F.2d 1089, 1093 (9th Cir. 1989). Thus, the
5 motion will be granted only if the movant establishes that "no
6 relief could be granted under any set of facts that could be proven
7 consistent with the allegations." Hishon v. King & Spalding, 467
8 U.S. 69, 73 (1984); see also Conley v. Gibson, 355 U.S. 41, 45-46
9 (1957); Newman v. Universal Pictures, 813 F.2d 1519, 1521-22 (9th
10 Cir. 1987). The court must accept all material allegations of the
11 complaint as true and all doubts must be resolved in the light most
12 favorable to the plaintiff. N.L. Indus. Inc. v. Kaplan, 792 F.2d
13 896, 898 (9th Cir. 1986).

14 However, "[i]f, on a motion for judgment on the pleadings,
15 matters outside the pleadings are presented to and not excluded by
16 the court, the motion shall be treated as one for summary judgment
17 and disposed of as provided in Rule 56, and all parties shall be
18 given reasonable opportunity to present all material made pertinent
19 to such a motion by Rule 56." Fed. R. Civ. P. 12(c).

20 V.

21 ANALYSIS

22 A. THE APPLICABILITY OF COLLATERAL ESTOPPEL TO CLAIMS ONE 23 THROUGH SIX

24 Lincoln Mercury argues that the determination of the NMVB
25 precludes third party plaintiffs from bringing claims one through
26 six. To prevail, Lincoln Mercury must establish that the NMVB

1 decision satisfies the requirements for the application of
2 collateral estoppel. Lucido v. Superior Court, 51 Cal.3d 335, 337
3 (1990) ("The party asserting collateral estoppel bears the burden
4 of establishing these requirements.") For the reasons set forth
5 below, Lincoln Mercury succeeds in establishing that collateral
6 estoppel should apply.

7 **1. Overview of Applicable Law**

8 Collateral estoppel, also known as issue preclusion, precludes
9 relitigation of issues argued and decided in prior proceedings.
10 Lucido, 51 Cal.3d at 341. Pursuant to 28 U.S.C. § 1738 and Supreme
11 Court decisions, federal courts apply the preclusion law of the
12 state in which the judgment was rendered. Marrese v. American
13 Academy of Orthopaedic Surgeons, 470 U.S. 373 (1985); see also
14 Kremer v. Chemical Construction Corp., 456 U.S. 461, 466-67 & n.
15 6 (1982); Allen v. McCurry, 449 U.S. 90, 96 (1980).

16 Under California law, Lincoln Mercury faces a three part test.
17 First, Lincoln Mercury must demonstrate that the NMVB proceeding
18 was adjudicatory in nature. Vandenberg v. Superior Court, 21
19 Cal.4th 815 (1999) (stating criteria). Second, it must establish
20 the essential elements of collateral estoppel, see § IV A3 infra.
21 Finally, even if the all the basic requirements are satisfied, the
22 court must consider the public policies underlying the doctrine
23 before concluding that collateral estoppel should apply. Id.

24 ////

25 ////

26 ////

2. Administrative Hearing as a Substitute for Judicial Proceeding

It is well established that collateral estoppel may apply to decisions made by administrative agencies "[w]hen an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate" United States v. Utah Constr. Co., 384 U.S. 394, 422 (1966).

As the California Supreme Court explains:

Whether collateral estoppel is fair and consistent with public policy in a particular case depends in part upon the character of the forum that first decided the issue later sought to be foreclosed. In this regard, courts consider the judicial nature of the prior forum, i.e., its legal formality, the scope of its jurisdiction, and its procedural safeguards, particularly including the opportunity for judicial review of adverse rulings.

Vandenberg, 21 Cal.4th 815, 830.

As applied to the case at bar, the character of the NMVB hearing is similar to that of a judicial proceeding. As is evidenced by the administrative record and transcript, the hearing took place over several days, both sides were represented by counsel and were permitted to testify, call witnesses, cross examine witnesses and engage in discovery. Moreover, DLMI had the opportunity for judicial review and did in fact appeal the decision to Superior Court.⁴ See, e.g., *Plaine v. McCabe*, 797 F.2d 713, 720

⁴ Compare to Jacobs v. CBS Broadcasting, 291 F.3d 1173, 1179 (9th Cir. 2002) (collateral estoppel not applied when the determination was made after an informal investigation and there was no testimony but rather informal discussion between the

1 (9th Cir. 1986) (giving administrative proceeding collateral
2 estoppel effect because "[t]he fairness hearing was conducted
3 similarly to a court proceeding. It was an adversary proceeding
4 in which opposing parties were present and represented by counsel
5 and were allowed to call, examine, cross-examine and subpoena
6 witnesses . . .").

7 **3. The Elements of the Collateral Estoppel Doctrine**

8 The application of issue preclusion is a fact-based inquiry
9 and must be decided according to the particular evidence and
10 circumstances of each case. Bell v. Wells Fargo Bank, N.A., 62
11 Cal.App.4th 1382 (1st Dist. 1998). Ford must establish that: (1)
12 the issue sought to be precluded from relitigation is identical to
13 that decided in the former proceeding; (2) the issue must have been
14 actually litigated in the prior proceeding; (3) the issue was
15 necessarily decided in the proceeding; (4) there was a final
16 judgment on the merits; and (5) the party against whom preclusion
17 is sought must be the same as, or in privity with, the party to the
18 former proceeding. Lucido, 51 Cal.3d at 341.

19 The court quickly disposes of the last three elements. These
20 elements are clearly established: there was final judgment on the
21 merits in the NMVB proceeding, the parties are in privity with the
22 prior proceeding, and the issues were necessarily decided by the
23 NMVB. The court also concludes that the issues are identical and
24 that the issues sought to be precluded were actually decided in the

25 _____
26 parties).

1 NMVB proceeding.

2 Third party plaintiffs argue that the NMVB hearing on the
3 protest pertained solely to the issue of whether there was good
4 cause for the termination of Daugherty's Lincoln Mercury franchise,
5 and did not address the issues raised in the third amended
6 complaint. Third party plaintiffs also argue that the issues in
7 the third amended complaint are identical in nature to the issues
8 raised in a petition that was never heard by the NMVB. The court
9 is not persuaded.

10 The NMVB made clear factual findings. Specifically, the NMVB
11 concluded that Daugherty ordered the extra cars, that he was aware
12 he ordered the extra cars and that the termination of the franchise
13 was not caused by the conduct of Lincoln Mercury.

14 The 'identical issues' requirement addresses "whether
15 'identical factual allegations' are at stake in the two
16 proceedings, not whether the ultimate issues or dispositions are
17 the same." Lucido, 51 Cal.3d at 342. Here, there are identical
18 factual allegations at stake in the two proceedings.

19 Each of the six claims that are at issue in this motion rely
20 on the allegation that Lincoln Mercury and Ford Credit secretly
21 arranged for ordering and shipping an excess number of cars and
22 that it was those actions of Lincoln Mercury and Ford Credit that
23 caused the DLMI franchise to fail. The NMVB, however, determined
24 to the contrary that DLMI ordered and desired the excess cars and
25 the termination of the franchise was not due to Lincoln Mercury's
26 actions. In essence, there appears to be no way that third party

1 plaintiffs can assert the current claims without implicating and
2 contradicting the facts determined by the NMVB.

3 Moreover, the argument that the claims raise new issues in
4 that they pertain to contract disputes, breach of good faith and
5 fraud, to name a few, is unavailing. These claims still rest on
6 the factual allegations determined by the NMVB.⁵ The fact that the
7 factual issues appear within the context of new legal theories is
8 immaterial. See Sutphin v. Speik, 99 P.2d 652, 656 (Cal. 1940)
9 (collateral estoppel is a bar to party presenting a new theory with
10 respect to the same issue previously litigated).

11 For these reasons, the court finds that the issues pending
12 before the NMVB and the issues stated in the six claims contained
13 in the third amended complaint are identical.

14 The court also concludes the issues were actually litigated
15 in the NMVB proceeding, thus establishing the last element required
16 for the application of collateral estoppel. Lucido, 51 Cal.3d at
17 341. It is clear that central to the NMVB's decision was the
18 factual determination that DLMI ordered the excess cars itself and
19 that Lincoln Mercury was not responsible for the failure of the
20 franchise.

21 Based on the forgoing reasons, the court concludes that
22 Lincoln Mercury has established that the issues are identical and

23
24 ⁵ For example, in the breach of contract claim, third party
25 plaintiffs claim that Lincoln Mercury "materially breached its
26 existing contract with DLMI by shipping DLMI unordered vehicles,
leaving DLMI with substantially more vehicles than it could sell
to consumers in a reasonable amount of time." DLMI Third Amen.
Compl. at 12:19.

1 that the issues were actually litigated before the NMVB.

2 **4. Public Policy Considerations**

3 Although the basic requirements for the application of
4 collateral estoppel are met, the public policies underlying the
5 doctrine must be examined before concluding that collateral
6 estoppel should apply. Lucido, 51 Cal.3d at 342-43. These
7 considerations include the "preservation of the integrity of the
8 judicial system, promotion of judicial economy, and protection of
9 litigants from harassment by vexatious litigation." Id.

10 In this case, these factors weigh in favor of applying
11 collateral estoppel. If the court were to hear the claims as
12 currently stated, there is a possibility that this court could make
13 a finding of fact contrary to the NMVB, an outcome that would
14 surely undermine the integrity of the judicial system. Id. at 347
15 ("Public confidence in the integrity of the judicial system is
16 threatened whenever two tribunals render inconsistent verdicts.")

17 Judicial economy is also served by applying collateral
18 estoppel. The re-litigation of factual questions that were already
19 conclusively determined by the NMVB does not promote judicial
20 economy; rather, it frustrates judicial economy. Finally,
21 applying collateral estoppel also serves the policy of protecting
22 parties from vexatious litigation. To not apply collateral
23 estoppel would mean subjecting Lincoln Mercury to litigating issues
24 that they already litigated before the NMVB.

25 In sum, because the elements of collateral estoppel are
26 established and because the public policy considerations favor

1 application of the doctrine, third party plaintiffs are precluded
2 from relitigating the issue of (1) whether DLMI ordered the excess
3 cars; and (2) whether the termination of the franchise was caused
4 by the conduct of representatives of Lincoln Mercury.

5 The court, therefore, will grant the motion for judgment on
6 the pleading but with leave to amend. The third party plaintiffs
7 may re-file their complaint if they assert claims that do not
8 implicate, depend on, or contradict the factual allegations already
9 determined by the NMVB.

10 **VI.**

11 **CLAIMS EIGHT AND NINE**

12 Lincoln Mercury also argues that claims eight and nine should
13 be barred. Claim eight is raised by DLMI against Lincoln Mercury
14 and claim nine is raised by Daugherty against Lincoln Mercury.
15 Both claims allege a violation of California Vehicle Code Section
16 11713.2.

17 Lincoln Mercury avers that on May 27, 2005, this court
18 dismissed the identical claims against Ford Motor Credit Company.⁶
19 Since no new allegations of coercion were alleged in the third
20 amended complaint, the new claim against Lincoln Mercury should
21 also be dismissed. DLMI did not address this in their opposition
22 to Lincoln Mercury's motion or at oral argument. The court agrees
23

24 ⁶ The court stated in its order that "nowhere in defendant's
25 119-paragraph counterclaim do defendants allege coercion - 'threat
26 of physical harm or economic compulsion' - which would require them
to take the undesired action - in this case, to accept delivery of
excess Lincoln Mercury vehicles."

1 with Lincoln Mercury with respect to these claims.

2 The claims raised against Lincoln Mercury in the third amended
3 complaint are in fact identical to the claims raised against Ford
4 Credit in the second amended complaint, and as Lincoln Mercury
5 points out, the court did dismiss these claims against Ford Credit.

6 In comparing the third amended complaint with the second
7 amended complaint, it appears that DLMI raises no new factual
8 allegations with respect to these claims. The court notes that
9 during oral argument on Ford Credit's motion to dismiss, counsel
10 for DLMI claimed that they would conduct additionally discovery as
11 to whether coercion (an element of the claim) existed on the part
12 of Ford Credit or Lincoln Mercury. The court has not been
13 presented with any new facts to support claims eight and nine in
14 the third amended complaint and thus the court adopts the same
15 reasoning from its prior decision. To avoid being repetitive, the
16 court directs both parties to its order dated May 27, 2005.

17 Accordingly, third party defendant's motion for judgment on
18 the pleadings is GRANTED as follows:

19 1. Claims one through six are DISMISSED without prejudice
20 and with leave to amend. Third party plaintiffs are granted
21 twenty (20) days from the date of the hearing (October 24, 2005)
22 by which to file an amended complaint that does not implicate, rely
23 on or contradict the factual determination made by the NMVB. Third
24 party defendants are granted twenty (20) days from the date of
25 filing of the new complaint to respond by answer or motion.

26 /////

1 2. Claims eight and nine are DISMISSED with prejudice.

2 IT IS SO ORDERED.

3 DATED: October 31, 2005.

4 /s/Lawrence K. Karlton

5 LAWRENCE K. KARLTON

6 SENIOR JUDGE

7 UNITED STATES DISTRICT COURT